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# ***NORTH CAROLINA REGISTER***

**VOLUME 11 • ISSUE 2 • Pages 72 - 100**  
**April 15, 1996**

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Environment, Health, and Natural Resources  
Human Resources  
Rules Review Commission  
Contested Case Decisions

### **PUBLISHED BY**

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# **NORTH CAROLINA REGISTER**

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**Volume 11, Issue 2  
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**April 15, 1996**

This issue contains documents officially  
filed through March 22, 1996.

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(December 1995 - September 1996)

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volume and issue number	issue date	last day for filing	end of comment period	earliest register issue for publication of text	earliest date for public hearing	A. non-substantial economic impact			B. substantial economic impact		
						end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session
10:17	12/01/95	11/07/95	01/30/96	02/01/96							
10:18	12/15/95	11/22/95	02/13/96	02/15/96							
10:19	01/02/96	12/07/95	03/04/96	03/15/96							
10:20	01/16/96	12/20/95	03/18/96	04/01/96							
10:21	02/01/96	01/10/96	04/01/96	04/15/96	02/16/96	03/04/96	03/20/96	05/13/96	04/01/96	04/22/96	01/30/97
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## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

GENERAL	FILING DEADLINES	NOTICE OF RULE-MAKING PROCEEDINGS	NOTICE OF TEXT
<p>The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:</p> <ol style="list-style-type: none"><li>(1) temporary rules;</li><li>(2) notices of rule-making proceedings;</li><li>(3) text of proposed rules;</li><li>(4) text of permanent rules approved by the Rules Review Commission;</li><li>(5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;</li><li>(6) Executive Orders of the Governor;</li><li>(7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;</li><li>(8) orders of the Tax Review Board issued under G.S. 105-241.2; and</li><li>(9) other information the Codifier of Rules determines to be helpful to the public.</li></ol>	<p><b>ISSUE DATE:</b> The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday, or holiday for State employees.</p> <p><b>LAST DAY FOR FILING:</b> The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.</p>	<p><b>END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:</b> This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.</p> <p><b>EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:</b> The date of the next issue following the end of the comment period.</p>	<p><b>EARLIEST DATE FOR PUBLIC HEARING:</b> The hearing date shall be at least 15 days after the date a notice of the hearing is published.</p> <p><b>END OF REQUIRED COMMENT PERIOD</b></p> <p>(1) <b>RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:</b> An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.</p> <p>(2) <b>RULE WITH SUBSTANTIAL ECONOMIC IMPACT:</b> An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.</p> <p><b>DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:</b> The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.</p> <p><b>FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:</b> This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.</p>

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
TAX REVIEW BOARD

## IN THE MATTER OF:

The Proposed assessment of Controlled Substance Excise  
tax for possession of non-tax-paid Controlled Substance  
on May 25, 1993 by the Secretary of Revenue against  
JACK EARL BEST and JOCELYN VERNELL BEST

ADMINISTRATIVE  
DECISION NUMBER: 311

THIS MATTER was heard before the Tax Review Board on December 19, 1995 in the City of Raleigh, Wake County, North Carolina in the office of the State Treasurer. Jack Earl Best and Jocelyn Vernell Best (hereinafter "Taxpayers") filed a petition for administrative review of the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on July 17, 1995 sustaining a proposed assessment of controlled substance excise tax for possession of non-tax-paid controlled substance.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with duly appointed member, Noel A. Allen, Attorney at Law participating.

Mr. Best and his attorney, Johnny S. Gaskins were present at the hearing; Christopher E. Allen, Assistant Attorney General, appeared on behalf of the Department of Revenue.

In the petition, the Taxpayers argued that the Assistant Secretary erred in sustaining the assessment of the controlled substance excise tax because they denied possessing a controlled substance. Taxpayers also argued that the statute under which the tax is assessed is unconstitutional.

After the December 19, 1995 meeting, the Board took the matter under advisement pursuant to G.S. § 105-241.2(b1). On February 20, 1996, the Board reviewed the Petition, brief, document and the record made in the proceeding before the Assistant Secretary.

The purpose of this Board is to provide administrative review to Taxpayers from the Secretary of Revenue's decision sustaining the assessment of tax or additional tax pursuant to North Carolina Revenue Laws. The Board after review of the factual situation and the application of the statute to those facts renders its decision. G.S. § 105-24 1.2 provides that the Board's decision shall confirm, modify, reverse, reduce, or increase the assessment or decision of the Secretary. G.S. § 105-241.2 does not give this administrative board the authority or jurisdiction to rule on the constitutionality of a statute. *Great Am. Ins. Co. v. Gold*, 254 N.C. 168, 118 S. E. 2d 792 (1961).

On review, the Board determined that G.S. § 105-113.105 *et. seq.* provides for the levy of an excise tax on persons (dealers) who possess a non-tax-paid controlled substance. The controlled substance is measured "by the weight of the substance whether pure, impure or dilute." G.S. § 105-113.107. A proposed assessment of the excise tax is presumed to be correct pursuant to G.S. § 105-24 1.1 (a), thus the burden is on the Taxpayer to overcome this presumption and rebut the assessment.

THE BOARD HAVING REVIEWED THE PETITION AND RECORD MADE IN THIS PROCEEDING AND HAVING CAREFULLY CONSIDERED THE MATTERS OF RECORD AND THE ARGUMENTS PRESENTED RENDERED THE FOLLOWING DECISION: that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record; that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact; and that the decision by the Assistant Secretary sustaining the tax assessment was fully supported by the conclusions of law. From the record, there was a reasonable basis to presume that the Taxpayers were in possession of the controlled substance. Pursuant to G.S. § 105-241.1(a), the proposed assessment of the excise tax is presumed to be correct.

IT IS THEREFORE ORDERED, that final decision of the Assistant Secretary sustaining the assessment is **CONFIRMED**.

Since the Tax Review Board is not empowered to pass upon the constitutionality of a statute, or its application to a particular assessment or taxpayer, the Taxpayers' argument regarding the constitutionality of the statute was not properly before this forum.

Entered this the 8th day of March, 1996.

**TAX REVIEW BOARD**

S/ Harlan E. Boyles, Chairman  
State Treasurer

S/ Hugh A. Wells, Chairman  
Utilities Commission

S/ Noel L. Allen  
Member



STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
TAX REVIEW BOARD

## IN THE MATTER OF:

The Proposed Assessment of  
additional Sales and Use  
Tax for the period of  
November 1, 1987 through  
September 30, 1990 against  
**Frank DeFelice Ph. D, Inc.,**  
t/a Lake Norman Motel, Marine  
and Restaurant

ADMINISTRATIVE  
DECISION NUMBER: 312

THIS MATTER was heard before the Tax Review Board (hereinafter "Board") on December 19, 1995 in the office of the State Treasurer in the City of Raleigh, Wake County, North Carolina. This matter involved an appeal by **Frank DeFelice Ph. D, Inc., t/a Lake Norman Motel, Marine and Restaurant** (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services for the Department of Revenue (hereinafter "Assistant Secretary") entered on April 20, 1995, sustaining a proposed assessment of additional sales and use tax for the period of November 1, 1987 through September 30, 1990.

Chairman Harlan E. Boyles presided over the hearing with appointed member, Noel L. Allen, Attorney at Law. Frank DeFelice appeared on behalf of the Taxpayer; George W. Boylan, Special Deputy Attorney General, appeared on behalf of the Department of Revenue.

After the December 19, 1995 meeting, the Board took the matter under advisement pursuant to G.S. § 105-241.2(b1). On February 20, 1996, the Board reviewed the Petition, documents and the record made in the proceeding before the Assistant Secretary. However, the Board determined that the information attached to Brief for the Secretary, even though it was submitted for illustrative purposes only, would not be accepted as evidence and was disregarded by the Board as part of the record.

The Tax Review Board, as a quasi-judicial body, provides administrative review to Taxpayers regarding the Secretary of Revenue's decisions sustaining the assessment of tax or additional tax pursuant to the North Carolina Revenue Laws. Pursuant to N.C.G.S. § 105-241.2, the Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.

THE BOARD HAVING REVIEWED THE PETITION AND RECORD MADE IN THE PROCEEDING AND HAVING CAREFULLY CONSIDERED THE MATTERS OF RECORD AND ARGUMENTS PRESENTED RENDERED THE FOLLOWING DECISION: that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the decision by the Assistant Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Assistant Secretary is CONFIRMED in every respect.

Entered this the 8th day of March, 1996.

## TAX REVIEW BOARD

S/ Harlan E. Boyles, Chairman  
State Treasurer

S/ Hugh Wells  
Chairman, Utilities Commission

S/ Noel L. Allen  
Member

**TITLE 15A - DEPARTMENT OF ENVIRONMENT,  
HEALTH, AND NATURAL RESOURCES**

**CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

**Notice of Rule-making Proceedings** is hereby given by the Environmental Management Commission in accordance with G.S. 150B-21.2(b). The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Rule Citation:** 15A NCAC 2B .0223

**Statutory Authority for the rule-making:** G.S. 143-214.1

**Statement of the Subject Matter:** In 1988, the Environmental Management Commission (EMC) classified the entire Neuse River Basin as Nutrient Sensitive Waters (NSW) and adopted a Nutrient Management Strategy. Due to continued nutrient loading problems, the EMC intends to revise the NSW strategy. The proposed interim strategy would require additional mandatory measures for point and nonpoint sources and encourage voluntary actions to achieve nutrient load reductions to the river system. Possible point source controls include effluent limits for total nitrogen and phosphorus, the formation of a coalition of dischargers, and the requirement to offset increases in nutrient loading by financing implementation of nonpoint source controls. Possible nonpoint source controls include a mandatory vegetated buffer along perennial and intermittent streams, new permitting procedures for animal operations, stormwater controls for development, and nutrient management planning. Voluntary measures include enhancing and targeting educational, technical and financial assistance programs. We are seeking comments on voluntary and mandatory aspects of the plan for both point and nonpoint sources of pollution.

**Reason for Proposed Action:** During July, September, and October 1995, extensive fish kills occurred in the Neuse River, primarily from New Bern to Minnesott Beach. Millions of menhaden, as well as numerous flounder, croaker and rock fish were killed. The Division of Environmental Management collected water quality samples in the area of the fish kills. The samples showed that the water was hypoxic (lacking oxygen) only 1 to 2 meters below the surface. The results also showed a prevalence of algal blooms. The purpose of the revised NSW Management Strategy is to require additional mandatory measures and encourage voluntary actions to achieve nutrient load reductions to the river system and avoid these problems in the future.

**Comment Procedures:** The purpose of the announcement is to encourage those interested in this proposal to provide

written comments. Written comments, data or other relevant information relevant to this proposal must be submitted by June 14, 1996. It is very important that all interested and potentially affected persons or parties make their views known to the Environmental Management Commission (EMC) whether in favor or opposed to any and all provisions of the proposal being noticed. If opposed to any or all provisions of the proposal we encourage you to offer appropriate alternative proposals. Written comments may be submitted to: David Harding, DEHNR/Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-5083, extension 569. Questions concerning proposed requirements for point source dischargers may be directed to Coleen Sullins at (919) 733-5083, ext. 550 and questions concerning proposed nonpoint source requirements to David Harding at (919) 733-5083, ext. 569.

\*\*\*\*\*

**CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

**Notice of Rule-making Proceedings** is hereby given by the Environmental Management Commission in accordance with G.S. 150B-21.2(b). The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Rule Citation:** 15A NCAC 2B .0315

**Statutory Authority for the rule-making:** G.S. 143-214.1

**Statement of the Subject Matter:** Proposed reclassification of a segment of the Neuse River from Classes WS-IV and WS-V to WS-IV and WS-IV CA (Critical Area).

**Reason for Proposed Action:** The Johnston County Board of Commissioners requested the reclassification of a segment of the Neuse River in Johnston County for water supply use. The raw water supply intake is to be located in a section of the Neuse River north of the Town of Smithfield. This section of the Neuse River is already classified as WS-IV due to the overlap of the Protected Area of the Town of Smithfield's water supply intake located downstream. In order to apply the appropriate water supply classification, a WS-IV Critical Area is required upstream of the Johnston County water supply intake and the WS-IV Protected Area is required upstream of the Critical Area. The latter action requires reclassifying a section of the Neuse River from WS-V to WS-IV. Local governments having jurisdiction within the Critical and Protected Areas would be required to adopt and implement water supply protection ordinances that, at a minimum, meet the state's minimum requirements for a WS-IV water supply. There are two local governments, Town of Clayton and Johnston County, that have jurisdiction within the area proposed for reclassification.

**Comment Procedures:** *The purpose of the announcement is to encourage those interested in this proposal to provide written comments. Written comments, data or other relevant information relevant to this proposal must be submitted by June 14, 1996. It is very important that all interested and potentially affected persons or parties make their views known to the Environmental Management Commission (EMC) whether in favor or opposed to any and all provisions of the proposal being noticed. Written comments may be submitted to: Steve Zoufaly, DEHNR/Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-5083, extension 566.*

\*\*\*\*\*

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

**Notice of Rule-making Proceedings** is hereby given by the N.C. Wildlife Resources Commission in accordance with G.S. 150B-21.2(b). The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Rule Citation:** 15A NCAC 10B .0106, .0123, .0203, .0208 - .0209, 10C .0107, .0205, .0305, .0401, 10D .0002 - .0003, 10F .0307, 10G .0100, 10I .0002

**Statutory Authority for the rule-making:** G.S. 75A-3; 75A-15; 113-132; 113-134; 113-138; 113-264; 113-270.1B; 113-270.3; 113-272; 113-273; 113-274; 113-275; 113-276.1; 113-276.1(3)(4); 113-291.1; 113-291.2; 113-291.3; 113-291.4; 113-291.5; 113-291.6; 113-292; 113-300.1; 113-300.2; 113-304; 113-305; 113-306; 113-307; 113-331; 113-333; 113-334(a); 113-337

### Statement of the Subject Matter:

**15A NCAC 10B .0106 - WILDLIFE TAKEN FOR DEPRE-  
DATIONS OR ACCIDENTLY** Clarification of rule regulat-  
ing mounting of road kills.

**15A NCAC 10B .0123 - POSSESSION OF CERTAIN  
SPECIES OF WILDLIFE RESOURCES** Clarification of  
restrictions or possession.

**15A NCAC 10B .0203 - WHITE TAILED** Restrictions on  
bag limits and changes in seasons for bow and arrow and  
muzzle loading weapons.

**15A NCAC 10B .0208 - QUAIL** Modification of seasons  
and bag limits.

**15A NCAC 10B .0209 - WILD TURKEY (BEARDED  
TURKEYS ONLY)** Modification of seasons.

**15A NCAC 10C .0107 - SPECIAL REGULATIONS: JOINT  
WATERS** Regulate seasons, sizes and creel limits of  
designated fish in joint waters.

**15A NCAC 10C .0205 - PUBLIC MOUNTAIN TROUT  
WATERS** Update list of waters listed as trout waters.

**15A NCAC 10C .0305 - OPEN SEASONS: CREEL AND  
SIZE LIMITS** Regulate/restrict creel and size limits in Lake  
Ramseur, Randolph County.

**15A NCAC 10C .0401 - MANNER OF TAKING MONGAME  
FISHES: PURCHASE AND SALE** Addition of waters to the  
Community Fishing Program and to regulate the manner of  
taking certain fish.

**15A NCAC 10D .0002 - GENERAL REGULATIONS  
REGARDING USE** Requires all users of state owned game  
lands to have game lands license.

**15A NCAC 10D .0003 - HUNTING ON GAME LANDS**  
Adds and deletes game lands from the program or modifies  
game land seasons or restrictions.

**15A NCAC 10F .0307 - CATAWBA: IREDELL: LINCOLN  
AND MECKLENBURG COUNTIES** Local water safety  
regulations/ Mecklenburg County.

**15A NCAC 10G .0100 - DISTRIBUTION AND SALE OF  
HUNTING: FISHING: AND TRAPPING LICENSE** Proce-  
dures and requirements providing proof of entitlement to use  
of hunting and for fishing license.

**15A NCAC 10I .0002 - PROTECTION OF  
ENDANGERED/THREATENED/SPECIAL CONCERN  
SPECIES** To allow commercial trade of designated listed  
species under permit.

### Reason for Proposed Action:

**15A NCAC 10B .0106 .0123 - To clarify Rules**

**15A NCAC 10B .0203, .0208, .0209 - To regulate/restrict  
take of resources.**

**15A NCAC 10C .0107 - To regulate/restrict taking of fish  
in joint waters.**

**15A NCAC 10C .0205 - To regulate/manage trout fishery.**

**15A NCAC 10C .0305 - Regulate/restrict fishing in Lake  
Ramseur.**

**15A NCAC 10C .0401 - To update list of waters in the  
Community Fishing Program and to regulate the taking of  
certain fish in these waters.**

**15A NCAC 10D .0002 - To regulate use of State owned  
game lands.**

**15A NCAC 10D .0003 - To regulate/manage game lands.**

**15A NCAC 10F .0307 - To regulate boat speeds in con-  
gested areas.**

**15A NCAC 10G .0100 - To prevent fraudulent use of  
hunting licenses.**

**15A NCAC 10I .0002 - To regulate commercial trade of  
listed species.**

**Comment Procedures:** *The record will be open for receipt  
of written comments from April 15, 1996 through June 14,  
1996. Such written comments must be delivered or mailed  
to the North Carolina Wildlife Resources Commission, 512  
North Salisbury Street, Raleigh, NC 27604-1188.*

The Codifier of Rules has entered the following temporary rule(s) in the North Carolina Administrative Code. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the *North Carolina Register* serves as a notice of rule-making proceedings for a permanent rule that does not differ substantially from the published temporary rule.

## TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Rule-making Agency: *DHR-Division of Medical Assistance*

Rule Citation: *10 NCAC 26H .0506*

Effective Date: *April 22, 1996*

Findings Reviewed by the Codifier of Rules: *Approved*

Statutory Authority for the rule-making: *108A-25(b); 108A-54; 108A-55; 42 C.F.R. 440.170(f)*

Reason for Proposed Action: *The effective date of a recent act of the General Assembly or the United States Congress. This change is necessary to permit payment to the public providers. The original rule as written limits payments to private providers only.*

Comment Procedures: *Written comments concerning these rule-making actions must be submitted by June 14, 1996 to Portia Rochelle, APA Coordinator, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603.*

### CHAPTER 26 - MEDICAL ASSISTANCE

#### SUBCHAPTER 26H - REIMBURSEMENT PLANS

#### SECTION .0500 - REIMBURSEMENT FOR SERVICES

##### .0506 PERSONAL CARE SERVICES

~~Reimbursement to personal care services providers will be an hourly all inclusive fee as developed by the Division of Medical Assistance based on the cost of the service.~~

(a) Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse. Payment is based on a negotiated hourly fee not to exceed reasonable cost.

(b) The Division of Medical Assistance will enter into contracts with private and public non-medical inpatient institutions using 42 CFR 434-12 for the provision of personal care services for State/County Special Assistance clients residing in domiciliary care homes.

(1) Reimbursement is determined by the Division of Medical Assistance based on a capitation per diem fee derived from review of industry costs and determination of reasonable costs

with annual inflation adjustments. The initial basic per diem fee is based on one hour of services per patient day. Additional payments may be made utilizing the basic one hour per diem fee as a factor, for Medicaid eligibles that have a demonstrated need for additional care. The initial basic one hour fee is computed by determining the estimated salary, fringes, direct supervision and allowable overhead. The fee(s) may be recalculated from a cost reporting period selected by the state. Payments may not exceed the limits set in 42 CFR 447.361.

(2) Public providers will be paid on an interim basis using the above method. Payments are to be cost settled with any overpayment repaid to the Division of Medical Assistance. No additional payment will be made due to cost settlement.

(c) These changes to the Payment for Services Prospective Reimbursement Plan for Personal Care Services will become effective when the Health Care Financing Administration, U.S. Department of Health and Human Services, approves amendment submitted to HCFA by the Director of the Division of Medical Assistance on or about January 1, 1996 as #MA 95-33, wherein the Director proposes amendments of the State Plan to amend Payment for services - Prospective Reimbursement Plan for Personal Care Services.

History Note: Authority *G.S. 108A-25(b); 108A-54; 108A-55; 131D-4.1; 131D-4.2; 1995 S.L. c. 507, s. 23.10; 42 C.F.R. 440.170(f);*

*Eff. January 1, 1986;*

*Temporary Amendment Eff. April 22, 1996.*

*This Section contains a listing of the rules to be reviewed by the Rules Review Commission (RRC) at the next meeting date as noted, and rules that RRC has objected to in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC objections as provided in G.S. 150B-21.12(a).*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**  
 Vernice B. Howard  
 Teresa L. Smallwood  
 Charles H. Henry  
 Philip O. Redwine - Vice Chairman

**Appointed by House**  
 Jennie J. Hayman - Chairman  
 Bill Graham  
 Paul Powell  
 Ed Shelton

**LOG OF FILINGS**  
**MEETING DATE: APRIL 18, 1996**

**RULES SUBMITTED: FEBRUARY 20, 1996 THROUGH MARCH 20, 1996**

**FOLLOW UP MATTERS:**

DHR/Social Services Commission -	10 NCAC 39D .0304
JUSTICE/Private Protective Services Board -	12 NCAC 7D .0808
DEHNR/Coastal Resources Commission -	15A NCAC 7H .0208
PUBLIC EDUCATION/State Board of Education -	16 NCAC 6D .0106
Marriage and Family Therapy Licensing Board -	21 NCAC 31 .0102, .0104, .0304, .0502
Examiners of Fee-based Practicing Pastoral Counselors -	21 NCAC 45 .0201, .0301, .0402, .0501, .0601, .0701, .0802, .0901, .1001

AGENCY/DIVISION	RULE NAME	RULE	ACTION
<b>COMMERCE/ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>			
	Collection	4 NCAC 2T .0604	Amend
<b>DHR/MEDICAL CARE COMMISSION</b>			
	Obstetrical Department	10 NCAC 3C .6208	Amend
<b>DHR/DIVISION OF SERVICES FOR THE BLIND/COMMISSION FOR THE BLIND</b>			
	Filling of Vacancies	10 NCAC 19C .0209	Amend
	Purpose	10 NCAC 19C .0408	Amend
	Policy	10 NCAC 19C .0409	Amend
	Procedure	10 NCAC 19C .0410	Amend
	Election	10 NCAC 19C .0504	Amend
	Organization	10 NCAC 19C .0509	Amend
	Meetings	10 NCAC 19C .0510	Amend
	Functions	10 NCAC 19C .0511	Amend

Subcommittees	10 NCAC 19C .0512	Amend
Hours of Operation	10 NCAC 19C .0602	Amend
Reports	10 NCAC 19C .0604	Amend
Set-Aside	10 NCAC 19C .0702	Amend
Distribution of Proceeds	10 NCAC 19C .0703	Amend
<b>DHR/DIVISION OF MEDICAL ASSISTANCE</b>		
Eyeglasses	10 NCAC 26B .0105	Amend
<b>JUSTICE/ATTORNEY GENERAL/COMPANY POLICE</b>		
Location	12 NCAC 2I .0101	Amend
Fee	12 NCAC 2I .0206	Amend
Liability Insurance	12 NCAC 2I .0210	Amend
<b>JUSTICE/CRIMINAL JUSTICE EDUCATION &amp; TRAINING STANDARDS COMMISSION</b>		
Purpose	12 NCAC 9F .0101	Adopt
Topical Areas	12 NCAC 9F .0102	Adopt
Approval of Courses	12 NCAC 9F .0103	Adopt
Instructor Qualifications	12 NCAC 9F .0104	Adopt
Instructor Responsibilities	12 NCAC 9F .0105	Adopt
Sanctions	12 NCAC 9F .0106	Adopt
Filing and Fees	12 NCAC 9F .0107	Adopt
<b>DEHNR/ENVIRONMENTAL MANAGEMENT COMMISSION</b>		
Minimum Design Requirements	15A NCAC 2H .0219	Amend
<b>DEHNR/WILDLIFE RESOURCES COMMISSION</b>		
Fishing on Gamelands	15A NCAC 10C .0004	Amend
Public Mountain Trout Waters	15A NCAC 10C .0205	Amend
Inland Game Fishes	15A NCAC 10C .0301	Amend
Inland Game Fishes	15A NCAC 10C .0302	Amend
Open Seasons	15A NCAC 10C .0305	Amend
Manner of Taking	15A NCAC 10C .0401	Amend
Special Device Fishing	15A NCAC 10C .0404	Amend
Permitted Special Devices	15A NCAC 10C .0407	Amend
Instructor Certification Requirements	15A NCAC 10K .0003	Adopt
<b>DEHNR/RADIATION PROTECTION COMMISSION</b>		
Exemptions	15A NCAC 11 .0349	Amend
<b>DEHNR/COMMISSION FOR HEALTH SERVICES</b>		
Procedure for Permit	15A NCAC 13B .0901	Repeal
Applicability	15A NCAC 13B .0902	Repeal
Application Requirements	15A NCAC 13B .0903	Repeal
Operational Requirements	15A NCAC 13B .0904	Repeal
Compost Classification	15A NCAC 13B .0905	Repeal
Requirement for Permit	15A NCAC 13B .1401	Amend
General Provisions	15A NCAC 13B .1402	Amend
General Prohibitions	15A NCAC 13B .1403	Amend
Siting/Design Requirements	15A NCAC 13B .1404	Amend
Application Requirements	15A NCAC 13B .1405	Amend
Operational Requirements	15A NCAC 13B .1406	Amend
Classification	15A NCAC 13B .1407	Amend
Methods for Testing	15A NCAC 13B .1408	Amend
Approval of Alternative Procedures	15A NCAC 13B .1409	Amend
Water Supplies	15A NCAC 18A .1720	Amend
Well Head Protection	15A NCAC 18A .1722	Amend

Springs	15A NCAC 18A .1723	Amend
Water Quality	15A NCAC 18A .1725	Amend
Emergency Supply Systems	15A NCAC 18A .1726	Amend
Continuous Disinfection	15A NCAC 18A .1727	Amend
Inspection Forms	15A NCAC 18A .1805	Amend
Disposal of Garbage	15A NCAC 18A .1814	Amend
Permits	15A NCAC 18A .2702	Amend
General	15A NCAC 19C .0601	Amend
Accreditation	15A NCAC 19C .0602	Amend
Approval of Training	15A NCAC 19C .0603	Amend
Asbestos	15A NCAC 19C .0605	Amend
Fees	15A NCAC 19C .0606	Amend
Asbestos Exposure	15A NCAC 19C .0607	Amend
Training Course	15A NCAC 19C .0608	Amend
Asbestos Neshap	15A NCAC 19C .0609	Amend
Requirements	15A NCAC 19C .0611	Adopt
Chemistry Quality Assurance	15A NCAC 20D .0243	Amend
Food/Lodging	15A NCAC 25 .0213	Amend

**DEPARTMENT OF REVENUE**

Tax Credit	17 NCAC 6B .0612	Amend
Fiduciary Returns	17 NCAC 6B .3716	Amend
Farm Machines	17 NCAC 7B .1101	Amend
Animal Clippers	17 NCAC 7B .1105	Amend
Egg Cooling Cabinets	17 NCAC 7B .1108	Amend
Feed Mills	17 NCAC 7B .1109	Amend
Cooling Fans	17 NCAC 7B .1110	Amend
Silo Unloaders	17 NCAC 7B .1112	Amend
Scales	17 NCAC 7B .1114	Amend
Certain Sales	17 NCAC 7B .1123	Amend
Refunds	17 NCAC 7B .1602	Amend
Governmental Sales	17 NCAC 7B .1701	Amend
Refunds to Counties	17 NCAC 7B .1702	Amend
Refunds to Hospitals	17 NCAC 7B .1802	Amend
Sales to Veterinarians	17 NCAC 7B .2401	Amend
Use Tax	17 NCAC 7B .2601	Repeal
Fertilizer and Seeds	17 NCAC 7B .4002	Amend
Insecticides	17 NCAC 7B .4004	Amend
Bread Used for Feed	17 NCAC 7B .4008	Amend
Refunds to Interstate Carriers	17 NCAC 7B .4301	Amend
Leases	17 NCAC 7B .4408	Amend
Shipments	17 NCAC 7B .4902	Amend

**SECRETARY OF STATE/BOXING COMMISSION**

Toughman	18 NCAC 9 .0117	Adopt
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**NC ACUPUNCTURE LICENSING BOARD**

Initiation of Formal Hearings	21 NCAC 1 .0705	Adopt
Procedure of Revocation	21 NCAC 1 .0709	Adopt

**NC MEDICAL BOARD**

Authority	21 NCAC 32H .0101	Amend
Definitions	21 NCAC 32H .0102	Amend
Advanced Life Support	21 NCAC 32H .0201	Amend
Approval Requirements	21 NCAC 32H .0203	Amend
Hospital Involvement	21 NCAC 32H .0301	Amend
Plan for Participating Hospitals	21 NCAC 32H .0302	Amend

Sponsor Hospital	21 NCAC 32H .0303	Amend
Educational Programs	21 NCAC 32H .0401	Amend
EMT-Paramedic Performance	21 NCAC 32H .0402	Amend
EMT-Intermediate Performance	21 NCAC 32H .0403	Amend
Mobile Intensive Care	21 NCAC 32H .0404	Amend
EMT-Advanced	21 NCAC 32H .0406	Amend
EMT-Defibrillation Performance	21 NCAC 32H .0407	Amend
Emergency Medical Dispatcher	21 NCAC 32H .0408	Amend
Medical Direction Assistant	21 NCAC 32H .0409	Adopt
Certification Requirements	21 NCAC 32H .0501	Amend
Certification Requirements	21 NCAC 32H .0502	Amend
Certification Requirements	21 NCAC 32H .0504	Amend
Certification Requirements	21 NCAC 32H .0505	Amend
Certification Requirements	21 NCAC 32H .0506	Amend
Approval Requirements	21 NCAC 32H .0507	Adopt
Grounds for Denial	21 NCAC 32H .0601	Amend
Procedures for Denial	21 NCAC 32H .0602	Amend
Conditions	21 NCAC 32H .0701	Amend
Amendment	21 NCAC 32H .0702	Amend
Required Forms	21 NCAC 32H .0801	Amend
Conditions	21 NCAC 32H .0901	Amend
Study Project Approval	21 NCAC 32H .0902	Amend

**NC PSYCHOLOGY BOARD**

Practice	21 NCAC 54 .1604	Repeal
Ethical Violations	21 NCAC 54 .1608	Amend
Review Procedure	21 NCAC 54 .1704	Amend
Practicing Psychologist	21 NCAC 54 .1801	Repeal
Failure to Appear	21 NCAC 54 .1904	Amend
License Renewal Form	21 NCAC 54 .2101	Amend
Reinstatement	21 NCAC 54 .2103	Amend
Suspension	21 NCAC 54 .2204	Repeal
HSP-P Requirements	21 NCAC 54 .2704	Amend
HSP-PA Requirements	21 NCAC 54 .2706	Amend

**NC VETERINARY MEDICAL BOARD**

Authority	21 NCAC 66 .0101	Amend
Applicability of Board Rules	21 NCAC 66 .0105	Amend
Current Information	21 NCAC 66 .0106	Amend
Fees	21 NCAC 66 .0108	Amend
Forms of Practice	21 NCAC 66 .0201	Amend
Name of Practice	21 NCAC 66 .0202	Amend
License Required to Practice	21 NCAC 66 .0203	Amend
Discipline of Licensees	21 NCAC 66 .0205	Amend
Minimum Standards	21 NCAC 66 .0206	Amend
Minimum Facility	21 NCAC 66 .0207	Amend
Facilities Prov. Limited Services	21 NCAC 66 .0208	Amend
Limited Liability Companies	21 NCAC 66 .0209	Adopt
Registered Limited Liability	21 NCAC 66 .0210	Adopt
Application and Examination	21 NCAC 66 .0301	Amend
Special Registration	21 NCAC 66 .0303	Amend
Discipline of Vet. Technicians	21 NCAC 66 .0304	Amend
Temporary Permits	21 NCAC 66 .0305	Amend
License without Examination	21 NCAC 66 .0306	Amend
Revocation	21 NCAC 66 .0307	Amend
Reinstatement	21 NCAC 66 .0308	Amend
Pending Complaint	21 NCAC 66 .0310	Adopt



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**RULES REVIEW COMMISSION**

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Limited Veterinary License	21 NCAC 66 .0311	Adopt
Committee on Investigations	21 NCAC 66 .0601	Amend
Who Shall Hear Contested Cases	21 NCAC 66 .0606	Amend
Subpoenas	21 NCAC 66 .0703	Amend

**NC SUBSTANCE ABUSE PROFESSIONALS CERTIFICATION BOARD**

Definitions	21 NCAC 68 .0101	Adopt
Board Mailing Address	21 NCAC 68 .0102	Adopt
Application for Registration	21 NCAC 68 .0201	Adopt
Registration Process	21 NCAC 68 .0202	Adopt
Certification as Counselor Intern	21 NCAC 68 .0203	Adopt
Supervised Practical Training	21 NCAC 68 .0204	Adopt
Certified Counselor Certification	21 NCAC 68 .0205	Adopt
Certification Period	21 NCAC 68 .0206	Adopt
Continuing Education	21 NCAC 68 .0207	Adopt
Reciprocity	21 NCAC 68 .0208	Adopt
Conversion	21 NCAC 68 .0209	Adopt
Process for Prevention Consultant	21 NCAC 68 .0210	Adopt
Process for Clinical Supervisor	21 NCAC 68 .0211	Adopt
Process for Residential Facility Director	21 NCAC 68 .0212	Adopt
Continuing Education Approval Policy	21 NCAC 68 .0213	Adopt
Educational Approval Policy	21 NCAC 68 .0401	Adopt
General Guidelines	21 NCAC 68 .0402	Adopt
Employer Inservice Event	21 NCAC 68 .0403	Adopt
Credit Denial or Limitation	21 NCAC 68 .0404	Adopt
Sponsor Guidelines	21 NCAC 68 .0405	Adopt
Procedures for Approval	21 NCAC 68 .0406	Adopt
Applicant Guidelines	21 NCAC 68 .0407	Adopt
Hearing Before Board	21 NCAC 68 .0701	Adopt
Right to Hearing	21 NCAC 68 .0702	Adopt
Request for Hearing	21 NCAC 68 .0703	Adopt
Hearing Requests	21 NCAC 68 .0704	Adopt
Notice of Hearing	21 NCAC 68 .0705	Adopt
Who Shall Hear Contested Cases	21 NCAC 68 .0706	Adopt
Petition for Intervention	21 NCAC 68 .0707	Adopt
Types of Intervention	21 NCAC 68 .0708	Adopt
Disqualification of Board Member	21 NCAC 68 .0709	Adopt

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**RULES REVIEW OBJECTIONS****AGRICULTURE****Pesticide Board**

2 NCAC 9L .1806 - Crop Advisor Exemption	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96

**AUCTIONEERS COMMISSION**

21 NCAC 4B .0202 - Filing and Fees	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 4B .0403 - Apprentice Auctioneer License	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 4B .0602 - Advertising	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96

**ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

**Coastal Resources Commission**

15A NCAC 7H .0208 - Use Standards  
Agency Revised Rule

RRC Objection 03/21/96  
Obj. Cont'd 03/21/96

**Wildlife Resources Commission**

15A NCAC 10K .0001 - Course Requirements  
Agency Revised Rule  
15A NCAC 10K .0003 - Instructor Certification Requirements  
Rule Withdrawn by Agency

RRC Objection 03/21/96  
Obj. Removed 03/21/96  
03/21/96

**FEE-BASED PRACTICING PASTORAL COUNSELORS**

21 NCAC 45 .0201 - Information Required  
No Response from Agency  
21 NCAC 45 .0301 - Types  
No Response from Agency  
21 NCAC 45 .0402 - Second Notice  
No Response from Agency  
21 NCAC 45 .0501 - Continuing Education Requirements  
No Response from Agency  
21 NCAC 45 .0601 - Equivalency  
No Response from Agency  
21 NCAC 45 .0701 - Issuance of Temporary Certificate  
No Response from Agency  
21 NCAC 45 .0802 - Types of Supervision  
Agency Revised Rule  
No Response from Agency  
21 NCAC 45 .0901 - Requirements for Individual Psychotherapy Experience  
Agency Revised Rule  
No Response from Agency  
21 NCAC 45 .1001 - Code of Ethics  
No Response from Agency

RRC Objection 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 02/15/96  
Obj. Cont'd 03/21/96

**HEARING AID DEALERS AND FITTERS BOARD**

21 NCAC 22L .0001 - Committee on Investigations  
RRC Reviewed Rule  
Agency Revised Rule

Extended Review 01/18/96  
RRC Objection 02/15/96  
Obj. Removed 03/21/96

**HUMAN RESOURCES**

**Medical Care Commission**

10 NCAC 3C .5401 - Definitions  
Agency Responded  
Rule Returned to Agency  
10 NCAC 3C .5402 - Physician Req for Inpatient Rehabilitation Facilities or Units  
Agency Responded  
Rule Returned to Agency  
10 NCAC 3C .5407 - Comprehensive Rehabilitation Personnel Administration  
Agency Responded  
Rule Returned to Agency  
10 NCAC 3C .5408 - Comprehensive Inpatient Rehabilitation Program Staffing Req.  
Agency Responded  
Rule Returned to Agency  
10 NCAC 3C .5409 - Staff Training for Inpatient Rehabilitation Facilities or Unit  
Agency Responded  
Rule Returned to Agency

RRC Objection 01/18/96  
Obj. Cont'd 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 01/18/96  
Obj. Cont'd 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 01/18/96  
Obj. Cont'd 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 01/18/96  
Obj. Cont'd 02/15/96  
Obj. Cont'd 03/21/96  
RRC Objection 01/18/96  
Obj. Cont'd 02/15/96  
Obj. Cont'd 03/21/96

10 NCAC 3C .5412 - Additional Requirements for Traumatic Brain Injury Patients	RRC Objection	01/18/96
Agency Responded	Obj. Cont'd	02/15/96
Rule Returned to Agency	Obj. Cont'd	03/21/96
10 NCAC 3C .5413 - Additional Requirements for Spinal Cord Injury Patients	RRC Objection	01/18/96
Agency Responded	Obj. Cont'd	02/15/96
Rule Returned to Agency	Obj. Cont'd	03/21/96

**Commission for Mental Health, Developmental Disabilities and Substance Abuse Services**

10 NCAC 15A .0100 and .0200		
Rules Withdrawn by Agency		03/21/96

**Social Services Commission**

10 NCAC 39D .0304 - Alternative Work Experience	Extended Review	01/18/96
	RRC Objection	02/15/96
Agency Responded	Obj. Cont'd	03/21/96
10 NCAC 46D .0106 - Allocation	RRC Objection	01/18/96
Rule Withdrawn by Agency	Obj. Cont'd	03/21/96
10 NCAC 46D .0107 - Reimbursement	RRC Objection	01/18/96
Rule Withdrawn by Agency	Obj. Cont'd	03/21/96
10 NCAC 46D .0202 - Review Criteria for Start-Up Funds	RRC Objection	01/18/96
Rule Withdrawn by Agency	Obj. Cont'd	03/21/96

**INSURANCE**

**Agent Services Division**

11 NCAC 6A .0904 - Regulatory Matters	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96

**Consumer Services Division**

11 NCAC 4 .0502 - Assumed Expenses and Current Scale	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
11 NCAC 4 .0505 - Standards for Basic Illustrations	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
11 NCAC 4 .0506 - Standards for Supplemental Illustrations	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
11 NCAC 4 .0509 - Annual Certifications	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96

**JUSTICE**

**Private Protective Services**

12 NCAC 7D .0808 - Concealed Weapons	RRC Objection	03/21/96
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**MARITAL AND FAMILY THERAPY CERTIFICATION BOARD**

21 NCAC 31 .0102 - Address	RRC Objection	02/15/96
No Response from Agency	Obj. Cont'd	03/21/96
21 NCAC 31 .0104 - Fees	RRC Objection	02/15/96
No Response from Agency	Obj. Cont'd	03/21/96
21 NCAC 31 .0304 - Subsequent Reexaminations	RRC Objection	02/15/96
No Response from Agency	Obj. Cont'd	03/21/96
21 NCAC 31 .0502 - Approved Supervision	RRC Objection	02/15/96
No Response from Agency	Obj. Cont'd	03/21/96

**MEDICAL BOARD**

21 NCAC 32H .0506 - Certification Requirements: Emergency Medical Dispatcher		
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<i>Rule Returned to Agency</i>		
<i>RRC Rescinds 12/25/95 Approval for Failure to Provide Notice on the Amendment</i>		
21 NCAC 32N .0002 - Continuances	RRC Objection	02/15/96
Agency Responded - Agency Will Not Revise Rule	Obj. Cont'd	08/10/95
Rule Returned to Agency for Failure to Comply With Administrative Procedures Act	Obj. Cont'd	09/21/95
		01/18/96

## **NURSING**

21 NCAC 36 .0228 - Clinical Nurse Specialist Practice	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96

## **NURSING HOME ADMINISTRATORS**

21 NCAC 37C .0101 - Petitions for Adoption of Rules	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 37C .0102 - Procedure for Adoption of Rules	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 37D .0412 - Initial On-the-Job Training	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 37F .0101 - Prerequisites for Temporary Licensure	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 37I .0101 - Investigation: Discipline: and Contested Case Proceedings	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96

## **PUBLIC EDUCATION**

<b>State Board of Education</b>		
16 NCAC 6D .0106 - Limited English Proficiency Programs	RRC Objection	03/21/96

## **SECRETARY OF STATE**

### **Boxing Commission**

18 NCAC 9 .0101 - Purpose, Applicability and Scope of the Rules	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
18 NCAC 9 .0103 - North Carolina State Boxing Commission	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
18 NCAC 9 .0104 - Conduct of Boxing Matches	RRC Objection	03/21/96
Agency Rewrote Rule as 18 NCAC 9 .0104 through .0109	Obj. Removed	03/21/96
18 NCAC 9 .0106 - Licensing Requirements and Duties of Licensees	RRC Objection	03/21/96
Agency Revised Rule and Recodified to 18 NCAC 9 .0111	Obj. Removed	03/21/96
18 NCAC 9 .0107 - Contracts and Financial Arrangements	RRC Objection	03/21/96
Agency Revised Rule and Recodified to 18 NCAC 9 .0112	Obj. Removed	03/21/96
18 NCAC 9 .0108 - Kickboxing	RRC Objection	03/21/96
Agency Rewrote Rule as 18 NCAC 9 .0113 through .0116	Obj. Removed	03/21/96

## **VETERINARY MEDICAL BOARD**

21 NCAC 66		
Rules Withdrawn by Agency		03/21/96

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Alcoholic Beverage Control Commission v. Tremik, Inc.	95 ABC 0925	Morrisson	03/25/96	
Andrew Parker v. Alcoholic Beverage Control Commission	95 ABC 1402	Phipps	03/27/96	
Alcoholic Beverage Control Comm. v. Partnership T/A T & L Groceries	95 ABC 1443	West	03/26/96	
Alcoholic Beverage Control Commission v. Cashion's Food Mart, Inc.	95 ABC 1444	Gray	03/13/96	
Alcoholic Beverage Control Commission v. Donald Ray Doak	95 ABC 1488	West	03/29/96	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Helen B. Hunter-Reid v. Crime Victims Compensation Commission	95 CPS 1336	Nesnow Smith	03/29/96	11:02 NCR 93
Kenneth Saunders v. Victims Compensation Commission	95 CPS 1445	Chess	03/26/96	
Manuel Cervantes v. Victims Compensation Fund	96 CPS 0118	Chess	03/19/96	
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Kinston Urological Associates, P.A. v. N.C. Cancer Program	95 EHR 1198*2	Nesnow Smith	03/27/96	11:02 NCR 97
Kinston Urological Associates, P.A. v. N.C. Cancer Program	95 EHR 1199*2	Nesnow Smith	03/27/96	11:02 NCR 97
<i>Coastal Resources</i>				
J. E. Smith Construction Co. v. Division of Coastal Management	96 EHR 0074	Nesnow Smith	02/23/96	
<i>Land Resources</i>				
K&G Properties, Inc. v. EHNR, Division of Land Resources	95 EHR 1078	Nesnow Smith	03/25/96	
<i>Marine Fisheries</i>				
Robert I. Swinson, Sr. v. EHNR, Health & Nat. Res., Marine Fisheries	95 EHR 0320	Chess	03/29/96	
Grayden L. Fulcher and Michael Styron, Sr. v. Div. of Marine Fisheries	96 EHR 0003	Reilly	03/06/96	
<i>WIC Program</i>				
Lazelle Marks v. EHNR, Division of Maternal and Child Health	95 EHR 0870	West	03/27/96	
Larry E. Mis v. USDA-Food/Cons Svc, Cory Menees-WIC Prog., EHNR	96 EHR 0164	Phipps	03/19/96	
<b>HUMAN RESOURCES</b>				
Cassandra M. Deshazo v. Christine E. Carroll, Chf Chld Abuse/Neg. Sec.	95 DHR 1410	Phipps	03/28/96	
<i>Division of Child Development</i>				
Mary T. Hill v. DHR, Division of Child Development	95 DHR 1192	Phipps	03/27/96	
<i>Division of Facility Services</i>				
Eloise Brown v. Dept. of Human Resources, Division of Facility Services	95 DHR 1002	Phipps	03/07/96	
<i>Group Care Licensure Section</i>				
Alex L. McCall v. DHR, Div/Facility Svcs, Group Care Licensure Sec.	95 DHR 1456	Nesnow Smith	03/26/96	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Division of Social Services</i>				
Rozena Chambliss v. Department of Human Resources	95 DHR 1044	Nesnow Smith	03/12/96	
Addie & Major Short v. Department of Human Resources	95 DHR 1063	Morrison	03/19/96	
Mr. and Mrs. Jessie Stevenson v. DHR, Division of Social Services	95 DHR 1072	Phipps	03/15/96	
William G. Fisher v. DHR, Div. of Social Services, Prog Integrity Branch	95 DHR 1234	Morrison	03/19/96	
<i>Child Support Enforcement Section</i>				
Richard R. Fox, Sr. v. Department of Human Resources	95 CSE 1169	Becton	03/19/96	
Joselito D. Pilar v. Department of Human Resources	95 CSE 1180	Chess	03/01/96	
David Lee Grady v. Department of Human Resources	95 CSE 1218	Morrison	03/26/96	
Patrick Orlando Crump v. Department of Human Resources	95 CSE 1221	Nesnow Smith	03/05/96	
Peter Robert Kovolaky v. Department of Human Resources	95 CSE 1230	Becton	03/11/96	
Lawrence Dow Dean v. Department of Human Resources	95 CSE 1267	Morrison	03/29/96	
Carl E. Coffey v. Department of Human Resources	95 CSE 1270	Nesnow Smith	03/15/96	
Keith Dewayne Senters v. Department of Human Resources	95 CSE 1273	Phipps	04/01/96	
Mickey Turner v. Department of Human Resources	95 CSE 1278	Nesnow Smith	03/14/96	
James Joseph Gallagher v. Department of Human Resources	95 CSE 1280	Chess	03/19/96	
James Thomas McRae v. Department of Human Resources	95 CSE 1296	Chess	03/15/96	
David J. Moseley v. Department of Human Resources	95 CSE 1304	Chess	03/29/96	
Derrick L. Conyers v. Department of Human Resources	95 CSE 1308	Reilly	03/13/96	
Charles Edward Smith v. Department of Human Resources	95 CSE 1309	West	03/07/96	
James Curtis Witwer v. Department of Human Resources	95 CSE 1331	Becton	03/26/96	
Thornell Bowden v. Department of Human Resources	95 CSE 1345	Morrison	03/07/96	
Henry S. Sada v. Department of Human Resources	95 CSE 1367	Nesnow Smith	03/21/96	
Charles F. Moore v. Department of Human Resources	95 CSE 1369	Chess	03/27/96	
Daniel Leslie Baker v. Department of Human Resources	95 CSE 1373	Morrison	03/12/96	
John L. Pike v. Department of Human Resources	95 CSE 1376	Nesnow Smith	03/21/96	
Wm. R. Evans v. Department of Human Resources	95 CSE 1377	Becton	03/11/96	
Rory J. Curry v. Department of Human Resources	95 CSE 1380	Mann	03/15/96	
Marcus Anthony Butts v. Department of Human Resources	95 CSE 1405	Nesnow Smith	03/27/96	
Cynthia Pinder v. Department of Human Resources	95 CSE 1406	Becton	03/11/96	
Ramon Domenech v. Department of Human Resources	95 CSE 1408	Phipps	03/11/96	
Dennis L. McNeill v. Department of Human Resources	95 CSE 1435	Becton	03/13/96	
Rick E. Atkins v. Department of Human Resources	95 CSE 1437	Phipps	04/01/96	
Timothy A. Ratley (Jeanes) v. Department of Human Resources	95 CSE 1465	Morrison	03/26/96	
Wilbur Dewayne Bault v. Department of Human Resources	95 CSE 1475	West	03/13/96	
Ronald D. Johnson v. Department of Human Resources	96 CSE 0084	Nesnow Smith	03/27/96	
John W. Scott v. Department of Human Resources	96 CSE 0130	Mann	03/15/96	
Laura Heidorf v. Department of Human Resources, Child Support Enf.	96 DCS 0065	Reilly	03/22/96	
<b>INSURANCE</b>				
Nadia A. Hakim v. Department of Insurance	95 INS 1422	Nesnow Smith	03/26/96	
<b>JUSTICE</b>				
<i>Education and Training Standards Division</i>				
Freddie Lavern Thompson v. Criml. Justice Ed. & Training Stds. Comm.	95 DOJ 0731	Chess	02/29/96	
Patricia Josephine Bonanno v. Sheriffs' Ed. & Training Stds. Comm.	95 DOJ 1152	Chess	03/25/96	
Rick M. Evoy v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 1235	Chess	03/25/96	
Gregory Lee Daughtridge v. Sheriffs' Ed. & Training Stds. Comm.	96 DOJ 0027	Reilly	03/19/96	
Carlton Gerald v. Criminal Justice Ed. & Training Stds. Comm.	96 DOJ 0068	Gray	03/26/96	
Ken Montie Oxendine v. Criminal Justice Ed. & Training Stds. Comm.	96 DOJ 0071	West	03/28/96	
David Kent Knight v. Sheriffs' Ed. & Training Stds. Comm.	96 DOJ 0115	West	03/28/96	
<i>Private Protective Services Board</i>				
William F. Combs v. Private Protective Services Board	96 DOJ 0022	West	03/22/96	
<b>PUBLIC INSTRUCTION</b>				
Lavern K. Suggs v. NC Board of Education	95 EDC 0383	Nesnow Smith	03/13/96	11:01 NCR 50

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>STATE PERSONNEL</b>				
<i>Administrative Office of the Court</i>				
Ethel R. Tyson v. NC Judicial Dept., Administrative Office of the Court	96 OSP 0080	Nesnow Smith	03/15/96	
<i>Appalachian State University</i>				
Janice S. Walton v. Appalachian St University, Claude Cooper, Bill Ragan	96 OSP 0062	West	03/13/96	
Janice S. Carroll v. Appalachian St University, Claude Cooper, Bill Ragan	96 OSP 0063	West	03/07/96	
<i>Caldwell County</i>				
Blake C. Pace v. Caldwell County	96 OSP 0047	Morrison	04/01/96	
<i>Department of Correction</i>				
Haydee Craver v. Department of Correction, Pender Correctional Inst.	95 OSP 1046	Gray	03/12/96	
<i>Department of Human Resources</i>				
Ophelia Webb v. Edard R. Inman, Dir. Alamance Cty DSS, Alamance Cty DSS, Alamance County, and DHR	96 OSP 0112	Gray	03/13/96	
<i>Caswell Center</i>				
Ramona C. Jenkins v. Department of Human Resources, Caswell Center	89 OSP 0411	Becton	03/26/96	
Ramona C. Jenkins v. Department of Human Resources, Caswell Center	91 OSP 0522	Becton	03/26/96	11:02 NCR 89
Franklin D. Sutton v. Department of Human Resources, Caswell Center	94 OSP 0766	Nesnow Smith	03/21/96	
<i>Department of Labor</i>				
Kevin P. Kolbe, Sr. v. Department of Labor	95 OSP 0968	Morrison	03/14/96	11:01 NCR 58
<i>New Hanover County Board of Health</i>				
Tabandeh Zand v. New Hanover County Board of Health	95 OSP 1035	Nesnow Smith	03/01/96	
<i>Department of Transportation</i>				
Pearlie M. Simuel-Johnson v. Department of Transportation	94 OSP 0589* <sup>1</sup>	Gray	03/01/96	
Pearlie M. Simuel-Johnson v. Department of Transportation	95 OSP 0837* <sup>1</sup>	Gray	03/01/96	
Melvin Duncan v. Department of Transportation	95 OSP 1462	Morrison	03/08/96	
<i>Tri-County Mental Health Complex</i>				
Deborah Heil v. Tri-County Mental Health Complex	95 OSP 1100	Nesnow Smith	03/22/96	
<i>University of North Carolina</i>				
Jerel H. Bonner v. School of Nursing UNC at Chapel Hill	96 OSP 0026	Gray	03/12/96	11:01 NCR 61

\* Consolidated cases.

**v.**

**NORTH CAROLINA DEPARTMENT OF HUMAN  
RESOURCES, CASWELL CENTER  
Respondent.**

## RECOMMENDED DECISION

## APPEARANCES

For Respondent: John R. Corne, Special Deputy Attorney General, N.C. Department of Justice, Raleigh, North Carolina.

## STATEMENT OF THE CASE

On October 9, 1990, the Petitioner was given another letter of dismissal in which she was specifically informed of the bases for her dismissal. This letter included an additional incident that allegedly occurred after the Petitioner's July 31, 1990 predismissal conference. It was alleged that the Petitioner left a resident alone in Birchwood B on August 2, 1990.



Respondent's Exhibit 8. On June 4, 1991, the Petitioner's dismissal was upheld by the Secretary David T. Flaherty. Respondent's Exhibit 11.

On June 11, 1995, the Petitioner filed a Petition For A Contested Case Hearing with the Office of Administrative Hearings ("OAH") pursuant to Chapter 126 of the North Carolina General Statutes challenging her dismissal on the grounds of retaliation and discrimination based upon race, sex, age, and religion. Respondent's Exhibit 12. The Respondent moved for a stay pending the resolution of the Petitioner's EEOC Charge. An order staying the contested case hearing was filed on November 25, 1991.

OAH-CRD concluded its investigation of the federal employment discrimination deferral charges and issued a Notice of Determination on September 16, 1993. OAH-CRD's Notice of Determination specifically concluded that: (1) "Examination of the record of evidence indicates that there is no reasonable cause to believe that these allegations [denial of transfer based on the Charging Party's sex and retaliation for filing a previous charge of discrimination (EEOC Charge #14890055, 10/27/88)] are true regarding the transfer issue" and (2) "That there is reasonable cause to believe that Respondent [DHR] has engaged in an unlawful employment practice [dismissing Petitioner in retaliation for filing a previous EEOC charge]." Respondent's Exhibit 13.

OAH-CRD terminated conciliation of the charges of unlawful employment practices under Title VII by letter dated October 7, 1993. Respondent's Exhibit 14. The Petitioner was informed of her right to obtain a right-to-sue letter and bring this action in federal court. The Petitioner, however, elected to file another Petition in OAH on November 24, 1993 (90 EEO 0911). Respondent's Exhibit 15.

Upon motion of the Respondent, the Petitioner's 90 EEO 0911 claim was removed to the United States District Court for the Eastern District of North Carolina where the case was given the docket number 93-787-CIV-5-D. Respondent's Exhibit 15. The Respondent then filed a motion for summary judgment in federal district court to which the Petitioner failed to respond.

On November 14, 1995, United States District Court Judge F.T. Dupree, Jr. entered Judgment ordering that the Respondent's motion for summary judgment be granted and the action dismissed. The issues litigated in 93-787-CIV-5 were the Petitioner's denial of transfer and alleged retaliatory discharge. The issues litigated included whether DHR had a legitimate non-discriminatory reason for dismissing the Petitioner.

On December 15, 1995, the Respondent filed its motion for summary judgement in this administrative proceeding alleging, among other things, that the doctrines of *res judicata* and collateral estoppel barred the Petitioner's claim. On January 3, 1996, the Petitioner responded to the Respondent's motion alleging, among other things, that "Summary Judgment was granted by failure of Petitioner to respond to discovery and no issues were litigated."

### CONCLUSIONS OF LAW

"Under the doctrine of *res judicata*, a final judgement on the merits in a prior action in a court of competent jurisdiction precludes a second suit involving the same claim between the same parties or those in privity with them. *Thomas M. McInnis & Assoc., Inc. V. Hall*, 318 N.C. 421, 428, 349 S.E.2d 552, 556 (1986)." *Bockweg v. Anderson*, 333 N.C. 486, 491, 428 S.E.2d 157 (1993).

Collateral estoppel precludes relitigation of an issue actually litigated and necessary to the outcome of a prior action. *See King v. N.C. Dept. of Transportation*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (March 5, 1996).

The companion doctrines of *res judicata* (claim preclusion) and collateral estoppel (issue preclusion) have been developed by the courts for the dual purposes of protecting litigants from the burden of relitigating previously decided matters and promoting judicial economy by preventing needless litigation. *See Parklane Hosiery Co. V. Shore*, 439 U.S. 322, 58 L. Ed.2d 552 (1979); *see also McInnis, supra*. Both doctrines involve a form of estoppel by judgment. Where the second action between two parties is upon the same claim, the prior judgment serves as a bar to the relitigation of all matters that were or should have been adjudicated in the prior action. *McInnis*, 318 N.C. at 428, 349 S.E.2d at 556; *see also Cromwell v. County of Sac*, 94 U.S. 351, 352-53, 24 L. Ed. 195, 197-98 (1877). Where the second action between the same parties is upon a different claim, the prior judgment serves as a bar only as to issues actually litigated and determined in the original action. *McInnis*, 318 N.C. at 429, 349 S.E.2d at 557; *Bockweg v. Anderson*, 333 N.C. 486, 491-492, 428 S.E.2d 157 (1993).

### A. Retaliatory Discharge Claim (Res Judicata)

The Petitioner's retaliatory discharge claims in *Jenkins v. DHR*, 93-787-CIV-5-D (1993) and *Jenkins v. DHR (Caswell Center)*, 91 OSP 0522 are exactly the same since they arise out of the same facts and circumstances. There is no dispute that the parties in 93-787-CIV-5-D and 91 OSP 0522 are the same. The federal district court entered judgment in DHR's favor concluding that the Petitioner's dismissal was not retaliatory. Therefore, DHR is entitled to summary judgment and dismissal of the Petitioner's retaliatory discharge claim because it is the same claim and is precluded by the doctrine of *res judicata* (claim preclusion).

### B. Petitioner's Discrimination Claims (Res Judicata)

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-1 *et seq.* prohibits discharge based on, among other things, race, sex, age, and religion. 42 U.S.C. § 2000e-2. Title VII also prohibits discharge based on retaliation. 42 U.S.C. § 2000e-3. The Petitioner could have included her allegations of race, age, and religious discrimination in her Title VII Charge of Discrimination.

North Carolina General Statutes section 126-36 (1977) provides:

Any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied him or that demotion, layoff or termination of employment was forced upon him in retaliation for opposition to alleged discrimination or because of his age, sex, race, color, national origin, religion, creed, political affiliation, or handicapped [handicapping] condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the State Personnel Commission.

In *Dept. of Correction v. Gibson*, 308 N.C. 131, 141, 301 S.E.2d 377 (1983), the North Carolina Supreme Court held:

The ultimate purpose of G.S. §126 . . . and Title VII . . . is the same; that is, the elimination of discriminatory practices in employment. We find the principles of law and the standards set forth above as applied to Title VII are sound and properly focus the inquiry upon the ultimate issue of whether the employee was the victim of *intentional* discrimination. We therefore adopt the evidentiary standards and principles of law above set forth [(threshold requirement of petitioner to establish a prima facie case, respondent's proffer of a legitimate non-discriminatory reason, and petitioner's ultimate burden to prove intentional discrimination)] . . .

"The plea of *res judicata* applies, *except in special cases*, not only to the points upon which the court was required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject in litigation and which the parties exercising reasonable diligence, might have brought forward at the time and determined respecting it. *In re Trucking Co.*, 285 N.C. 552, 560, 206 S.E.2d 172, 178 (1974) (citations omitted) (emphasis added)." *Edwards v. Edwards*, 118 N.C. App. 464, 472, 456 S.E.2d 126 (1995).

The Petitioner was required to exercise due diligence and raise her race, sex, age, and religion claims together with her retaliatory discharge claim under Title VII. Such claims should have been brought with the Petitioner's sex discrimination and retaliation claims. The federal court has entered judgment against the Petitioner on the sex discrimination and retaliation allegations. Therefore, based upon the doctrine of *res judicata*, DHR is entitled to summary judgment and dismissal of the Petitioner's discrimination claims since those claims involve issues which "properly belonged to the subject in litigation and which the parties *exercising reasonable diligence*, might have brought forward at the time and determined respecting it." *Painter v. Board of Education*, 288 N.C. 165, 173, 217 S.E.2d 650, 655 (1975) (quoting *Gibbis v. Higgins*, 215 N.C. 201, 204-05, 1 S.E.2d 554, 557 (1939)).

### C. Petitioner's Discrimination Claims (Collateral Estoppel)

Each of the Petitioner's discrimination claims requires proof of the following issues: (1) the Petitioner must establish

a *prima facie* case; (2) then DHR must establish a legitimate non-discriminatory reason for the Petitioner's dismissal; (3) the Petitioner must then prove that DHR's stated legitimate reason was pretextual. *St. Mary's Honor Center v. Hicks*, 113 S.Ct. at 2742 (1993). Proving pretext merges with the ultimate burden of persuasion. *Texas Dep't of Community Aff. v. Burdine*, 450 U.S. 248, 67 L. Ed. 2d.. 207, 101 S. Ct. 1089 (1981).

The Petitioner may meet her burden via direct or circumstantial evidence. *Id.* The issue is discriminatory firing; therefore, the Petitioner must show, by a preponderance of the evidence, that discrimination motivated her firing. *Hicks*, 113 S. Ct. At 2754. The Petitioner must show that race, sex, age, or religion probably, not merely possibly, was a determining factor in the Respondent's decision to terminate her employment. *Lovelace v. Sherwin-Williams Co.*, 681 F.2d 230 (4th Cir. 1982); *Henson v. Liggett Group*, 61 F.3d 270 (4th Cir. 1995).

The federal district court in *Jenkins v. DHR*, 93-783-CIV-5-D (1993) concluded that "Defendant's (DHR's) decision to dismiss plaintiff [Petitioner] was justified by un rebutted legitimate non-discriminatory reasons." *Id.* at 8. The issues of whether a legitimate non-discriminatory reason was established and whether the Petitioner carried her burden to prove intentional discrimination were actually litigated and determined by the federal district court in 93-787-CIV-5-D in favor of DHR. Since the parties are the same, the doctrine of collateral estoppel precludes the relitigation of these issues when each of these issues are dispositive of the Petitioner's race, sex, age, and religious discrimination and retaliation claims which were decided against her in federal court.

The Respondent is entitled to summary judgment, as a matter of law, with respect to the Petitioner's discrimination claims based upon the doctrine of collateral estoppel.

#### RECOMMENDED DECISION

The undersigned determines that the Respondent is entitled to summary judgment on the grounds that the Petitioner's retaliation claim and discrimination claims are barred by the doctrines of *res judicata* (claim preclusion) and collateral estoppel (issue preclusion).

#### ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

#### NOTICE

The State Personnel Commission will make the Final Decision in this contested case. Before the agency makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 26th day of March, 1996.

\_\_\_\_\_  
Brenda B. Becton  
Administrative Law Judge

**STATE OF NORTH CAROLINA**  
**COUNTY OF GREENE**

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
95 CPS 1336**

**HELEN B. HUNTER-REID**  
Petitioner,

v.

**THE NORTH CAROLINA CRIME VICTIMS  
COMPENSATION COMMISSION**  
Respondent.

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**RECOMMENDED DECISION**

This matter was heard before Administrative Law Judge Dolores O.Nesnow Smith on March 20, 1996 in New Bern, North Carolina.

**APPEARANCES**

Petitioner: Helen Hunter-Reid  
908 Jennifer Lane  
Snow Hill, North Carolina 28580  
Appeared *Pro Se*.

Respondent: Reuben Young  
Associate Attorney General  
N.C. Department of Justice  
Crime Control Section  
P.O. Box 27687  
Raleigh, North Carolina 27611

**ISSUE**

Did Respondent err in denying Petitioner's claim for compensation under the Crime Victims Compensation Act?

**STATUTE IN ISSUE**

N.C. GEN. STAT. 15B-11(6)

**FINDINGS OF FACT**

1. Everette Parker was the 32 year-old son of Helen Hunter-Reid.
2. Mr. Parker was killed on December 30, 1994. Mrs. Hunter-Reid subsequently applied to the Respondent for funeral and burial expenses.
3. Respondent does not contest that Mrs. Hunter-Reid is the victim's survivor as described by the Crime Victims Compensation Act.
4. Parker had been friends with John and Mary Quidley since approximately 1991. Mrs. Hunter-Reid had met the Quidleys at her home and, though she did not think highly of their lifestyle, they were polite and did not curse or drink while they were in her home.
5. Mrs. Hunter-Reid testified that the Quidleys drank a lot and she believed that they also took "dope." She testified that it was her understanding that John Quidley had some involvement with "women who did things for him" and that her son was paid by Quidley to protect the women.

6. Parker had been in the military as a young man. Quidley, who occasionally referred to Parker as his "bodyguard," had also been in the military. Parker called Quidley "Sarge."
7. On the morning of December 30, 1994, Parker was at the trailer park home of John and Mary Quidley.
8. At approximately 10:00 a.m., Parker and the Quidleys called for a taxicab. The cab arrived and took them to a local bar, where they all began to drink. The three continued on to another bar and at 12:00 noon, they called for another cab to bring them back to the trailer park.
9. When the cab arrived at the Foxhole Bar, a white male, later identified as John Quidley, a black male, later identified as Everette Parker, and a white female, later identified as Mary Quidley, entered the cab.
10. The cab driver testified that the female did not say a word during the trip but the two males were arguing. The driver told them they would have to settle down if they were going to ride in his cab. Mary and Parker sat in the back seat and Quidley sat in the front.
11. During the cab ride, the two males continued to argue about Parker allegedly having fondled Mary's breast.
12. The driver told the two males on approximately three occasions to "settle down" or get out of the cab.
13. During the ride home, Quidley told Parker three times that he was going to kill him. He also said that he was going to shoot him with his shotgun when they got home.
14. Parker stated on one occasion, "You won't do that, Sarge. I've known you too long."
15. Mr. Quidley had served eight years in prison for killing his stepfather. It is unknown whether Parker knew this.
16. One week earlier, at Christmas, Parker had been given a jacket by his brother. When the cab arrived at the trailer, Parker said, "I have to go inside to get my jacket."
17. The three then entered the trailer and the cab left.
18. It is unknown precisely what occurred after the three returned home. Quidley and Mary later gave several inconsistent statements. For example, Quidley stated that Parker came at him with a knife and cut his hands. He later stated that Parker was coming at Mary with a knife and that he had interceded. Mary said Parker had come to their trailer and kicked in the door. Mary also said Quidley told her he was afraid of Parker and felt he had to protect himself and her.
19. Between 12:30 and 1:00 p.m., Quidley was found wandering around the trailer park. He was very drunk and incoherent. Neighbors who knew Quidley returned him to the trailer. Mary opened the door and Quidley fell into the trailer. The neighbors then saw the feet of a man lying on the floor at the bathroom door. They asked Mary if he was alright and she told them that her husband had shot the man half an hour ago and she thought he was dead. The neighbors called the police.
20. Everette Parker was dead with a gunshot wound to the left abdomen. John and Mary Quidley were taken into custody. Quidley admitted to shooting Parker.
21. The police examined John Quidley's hands and found no cuts. They observed only a pinch mark on one hand at the base of the "V" where the thumb and the first finger meet. Detective Dean Adelmund of the Jacksonville Police Department testified that the pinch appeared to him to have been caused by cocking the shotgun.
22. The police found a knife on the coffee table in the trailer. The knife was sent to the SBI for testing. Because the knife had a rough-textured grip, no fingerprints were found. No blood was apparent on the knife and the SBI tests found no trace of blood.
23. Mrs. Hunter-Reid testified that she did not have money to bury her son, that she had to borrow funeral expenses, and that she can not afford a marker for her son's grave. She testified that she is requesting only enough money to pay for funeral expenses and a marker.

24. The Crime Victims Compensation Act lists contributory misconduct as one of the grounds upon which a denial may be based.

25. Mrs. Hunter-Reid's application to the Respondent for funds was denied on the grounds that her son's contributory misconduct contributed to the killing.

26. The Respondent cited as contributory misconduct the evidence that Parker had heard Quidley say he was going to kill him three times but Parker chose to remain in Quidley's presence and even entered the trailer.

Based upon the above Findings of Fact, the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. The evidence is uncontroverted that Parker was engaged in an argument with Quidley. The argument was of enough intensity to prompt the cab driver to ask them several times to stop. It appears, however, that the argument did not become physical and had not risen to a high enough intensity to cause the cab driver to put the men out of the cab.

Parker knew Quidley since 1991. He called him "Sarge," a nickname which is friendly and which connotes a higher rank, i.e. a name of some respect. While Quidley threatened to kill Parker three times, Parker revealed his state of mind by saying that he did not believe Quidley would do that because they had been friends too long.

The evidence tends to indicate that Parker did not enter the trailer in an effort to accelerate the fight. Parker was found with his jacket on. He was shot coming out of the bathroom. Thus, the evidence indicates that Parker entered the trailer to get his jacket. He put it on, he went to the bathroom, and then, presumably, he was going to leave.

The question remains whether Parker was reasonable in believing that Quidley would not kill him. If a reasonable man would have believed he was in danger, then Parker's behavior may rise to the level of contributory misconduct.

It is unknown whether Parker knew of Quidley's imprisonment for murder. From the evidence, it would appear that Parker and Quidley lived on the fringe of society. There is no evidence that they had jobs and there is some evidence that they may have been involved in a disreputable business together. It is known that Quidley and Mary drank a great deal. In such a society, a stint in prison, even for murder, may not have the same extremely negative and frightening effect which it would have in a more conventional society.

There is a sense of correctness in denying claims where the victim was not an upstanding member of society, or where the victim's lifestyle was opprobrious. However, the statute makes no allowance for such considerations.

The Crime Victims Compensation Act, as it is currently written, does not require that victims be without blemish. It requires only that they not be involved in an act of contributory misconduct.

2. Considering all of the above, it is the opinion of the undersigned that Parker was not unreasonable to stay with Quidley after the verbal threats nor was he unreasonable in believing that Quidley was not going to kill him.

3. It is concluded that Parker was not engaged in an act of contributory misconduct at the time of his murder.

Based upon the above Conclusions of Law, the undersigned makes the following:

#### RECOMMENDATION

That the Respondent approve Petitioner's claim for compensation and award the amount necessary to cover the funeral expenses and the cost of a headstone.

#### MEMORANDUM OF LAW

(26 NCAC 03 .0125)

Parker's mother, the Petitioner in this action, presented a strong, composed, but heart wrenching argument for the

remedy she seeks. The Attorney General quite correctly and convincingly asserted that decisions concerning the payment of compensation to crime victims must be made with cool, unemotional consideration.

The undersigned has deliberated upon this decision at length and without emotion. Whether Mrs. Hunter-Reid is a worthy recipient is of no consequence as is Parker's lifestyle or position in society. The single issue is whether the victim was involved in an act of contributory misconduct by behaving in an unreasonable manner. Disregarding all peripheral matters, Petitioner's behavior was not contributory misconduct.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Crime Victims Compensation Commission.

This the 29th day of March, 1996.

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Dolores O. Nesnow Smith  
Administrative Law Judge

STATE OF NORTH CAROLINA  
COUNTY OF LENOIR

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
95 EHR 1198  
95 EHR 1199

KINSTON UROLOGICAL ASSOCIATES, P.A.,       )  
Petitioner,    )  
  )  
v.    )  
  )  
N.C. CANCER PROGRAM,                                )  
Respondent.    )

**RECOMMENDED DECISION**

This matter was heard before Administrative Law Judge Dolores O. Nesnow Smith on March 19, 1996 in New Bern, North Carolina.

**APPEARANCES**

Petitioner:       Diedra Herring, Business Manager  
                      Kinston Urological, P.A.  
                      Kinston Clinic  
                      North Suite L  
                      Kinston, North Carolina 28501  
                      Appeared *Pro Se*

Respondent:      John Barkley  
                      Assistant Attorney General  
                      N.C. Department of Justice  
                      P.O. Box 629  
                      Raleigh, North Carolina 27602

**ISSUE**

Did Respondent err in denying Petitioner's claim for compensation under the Cancer Treatment Program?

**STATUTES AND RULES AT ISSUE**

N.C. GEN. STAT. 130A-205  
15A NCAC 16A .1101 et seq.  
15A NCAC 24A .0302

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following:

**FINDINGS OF FACT**

1. The Cancer Treatment Program provides reimbursement for patients who qualify for aid based on financial need.
2. It is not uncommon for the health care provider to submit forms for payment on behalf of the patient.
3. In order to be reimbursed, an applicant must first have a determination of financial eligibility. He then must submit the following two forms:
  - (a) Authorization Request - this must be received by the Respondent within one year after the date



of service, and

(b) a Claim for Payment - this must be received by the Respondent within one year after the date of service.

4. 15A NCAC 24A .0302 provides in pertinent part:

(5) A claim for payment must be received by the Department within one year after the date of service or within 45 days after the date of authorization approval, whichever is later, or the claim will be denied.

5. Ray Shackelford, the Manager of Provider Relations, Purchase of Medical Care Services, Department of Environmental Health and Natural Resources, testified that the above provision provides a one year absolute cut off date.

6. Mr. Shackelford explained that the above-noted rule has the "45 Days" provision because claimants are given one year from date of service to file the first form, i.e. the Authorization Request. If a claimant files the first form close to the end of the first year after service, waits for the Respondent's answer, and then attempts to file the second form, the Claim for Payment, that form will be outside the one year cut-off. Thus, the rule allows one year from the date of service for the Claim for Payment... or 45 days after the date of authorization approval, whichever is later.

7. After considering all possibilities, it is found that the 45 day provision is inapplicable in the case at hand.

8. Respondent's Office Manager, Diedra Herring, received a promotion making her the Business Manager.

9. Although Kinston Urological has an employee who handles insurance claims, Ms. Herring was asked to "take care of" two particular cancer patients.

10. Ms. Herring testified that the employee in charge of insurance claims may have known about the Claim for Payment Form, but that she, as the Business Manager, did not personally handle insurance claims and did not know about this second form.

11. The patients were deemed to be financially eligible for assistance under the Cancer Treatment Program.

12. Ms. Herring filed the Authorization Request for a number of treatments and office visits on these two patients. She received from Respondent a response indicating that the treatments were ones which would be covered, i.e. the Respondent's authorization.

13. Since she did not know that a Claim for Payment must also be submitted if and when the treatment actually occurs, she filed no additional forms with the Respondent.

14. After Ms. Herring learned of her error, she contacted the Respondent's Purchase of Medical Care Department. While Ms. Herring had a cordial and cooperative relationship established with Respondent, a review of the records indicated that the outstanding claims could not be paid because they were submitted more than a year after the treatment.

15. It is uncontested that all the claims at issue occurred more than one year before the Petitioner attempted to file the claim for Payment.

16. Mr. Shackelford further testified that the regulations for processing claims had had a provision allowing for discretion in instances where there were extenuating circumstance for a late filing. He testified that that provision had been deliberately removed because it was determined to be unmanageable for the reviewers to continuously make decisions as to the merits of claims for exceptions.

Based upon the above Findings of Fact, the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. 15A NCAC 24A .0302 clearly provides for an absolute cut-off of one year after service to file the Claim for Payment. There is no provision for consideration of extenuating circumstances.

2. Petitioner submitted the claims for payment at issue more than one year after the services were rendered.
3. It is therefore concluded that Respondent did not err in denying the Petitioner's claim for payment.

Based upon the above Conclusions of Law, the undersigned makes the following:

**RECOMMENDATION**

That Respondent affirm the decision to deny payment of the claims at issue.

**MEMORANDUM OF LAW**

While Ms. Herring was reasonable in believing she had filed all forms necessary since Respondent had issued what appeared to be an "approval," and while there was no misfeance in what appears to be an "honest" mistake, the regulations allow no exceptions to the one year cut-off.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Environment, Health and Natural Resources.

This the 26th day of March, 1996.

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Dolores O. Nesnow Smith  
Administrative Law Judge

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

**TITLE      DEPARTMENT      LICENSING BOARDS      CHAPTER**

1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
*21	Occupational Licensing Boards	Mortuary Science	34
22	Administrative Procedures	Nursing	36
23	Community Colleges	Nursing Home Administrators	37
24	Independent Agencies	Occupational Therapists	38
25	State Personnel	Opticians	40
26	Administrative Hearings	Optometry	42
27	NC State Bar	Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Practicing Psychologists	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Soil Scientists	69
		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

**Note:** Title 21 contains the chapters of the various occupational licensing boards.



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## ACUPUNCTURE LICENSING BOARD

21 NCAC 01 .0301		10:22 NCR 2860								
21 NCAC 01 .0705	10:17 NCR 2228		10:22 NCR 2834							
21 NCAC 01 .0709	10:17 NCR 2228		10:22 NCR 2834							

## AGRICULTURE

2 NCAC 09C .0700	10:24 NCR 3056									
2 NCAC 48A .0200	10:24 NCR 3056									
2 NCAC 48A .1100	10:24 NCR 3056									
2 NCAC 48B	10:24 NCR 3056									
2 NCAC 52B .0200	10:24 NCR 3056									

## ALARM SYSTEMS LICENSING BOARD

12 NCAC 11 .0202	10:24 NCR 3057									
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## CHILD DAY CARE COMMISSION

10 NCAC 03U .0102		10:20 NCR 2593								
10 NCAC 03U .0704	10:19 NCR 2506									
10 NCAC 03U .0710	10:22 NCR 2829									
10 NCAC 03U .2701		10:20 NCR 2593								
10 NCAC 03U .2702		10:20 NCR 2593								
10 NCAC 03U .2703		10:20 NCR 2593								
10 NCAC 03U .2704		10:20 NCR 2593								

## COMMERCE

Credit Union Division										
4 NCAC 06C .0205			10:18 NCR 2398							

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4 NCAC 06C .0407 10:18 NCR 2398  
4 NCAC 06C .0409 10:18 NCR 2398

## COMMUNITY COLLEGES

23 NCAC 02D .0325 10:24 NCR 3058  
23 NCAC 02E .0203 10:24 NCR 3058  
23 NCAC 03A .0113 10:24 NCR 3058

## ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15A Public Notice  
15A NCAC 01K 10:19 NCR 2506

11:01 NCR 2

## ENVIRONMENTAL MANAGEMENT COMMISSION

15A NCAC 02 10:24 NCR 3045  
15A NCAC 02B .0223 11:02 NCR 75  
15A NCAC 02B .0224 10:18 NCR 2400  
15A NCAC 02B .0227 10:18 NCR 2400  
15A NCAC 02B .0303 10:18 NCR 2400  
15A NCAC 02B .0315 11:02 NCR 75  
15A NCAC 02L .0106 10:19 NCR 2508  
15A NCAC 02L .0202 10:20 NCR 2591  
15A NCAC 02P .0402 10:19 NCR 2512

## FACILITY SERVICES, DIVISION OF

10 NCAC 03 10:18 NCR 2399  
10 NCAC 03R .3000 10:23 NCR 2956  
10 NCAC 03R .3001 10:21 NCR 2699

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10 NCAC 03R .3010		10:21 NCR 2699								
10 NCAC 03R .3020		10:21 NCR 2699								
10 NCAC 03R .3030		10:21 NCR 2699								
10 NCAC 03R .3032		10:21 NCR 2699								
10 NCAC 03R .3040		10:21 NCR 2699								
10 NCAC 03R .3050		10:21 NCR 2699								

## FINAL DECISION LETTERS

Voting Rights Act

11:01 NCR 1

## GENERAL CONTRACTORS LICENSING BOARD

21 NCAC 12 10:22 NCR 2829

## HEALTH SERVICES, COMMISSION for

15A NCAC 18A .2601 11:01 NCR 24

## HIGHWAYS, DIVISION OF

19A NCAC 02D .1101 10:23 NCR 2957  
19A NCAC 02D .1102 10:23 NCR 2957  
19A NCAC 02D .1103 10:23 NCR 2957  
19A NCAC 02D .1104 10:23 NCR 2957  
19A NCAC 02D .1105 10:23 NCR 2957  
19A NCAC 02D .1106 10:23 NCR 2957  
19A NCAC 02D .1107 10:23 NCR 2957  
19A NCAC 02D .1108 10:23 NCR 2957  
19A NCAC 02D .1109 10:23 NCR 2957  
19A NCAC 02D .1110 10:23 NCR 2957

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19A NCAC 02D .1111	10:23 NCR 2957									
19A NCAC 02D .1112	10:23 NCR 2957									
<b>HUMAN RESOURCES</b>										
<b>Division of Aging</b>										
10 NCAC 22	10:23 NCR 2956									
<b>INSURANCE</b>										
11 NCAC 12 .0551	10:18 NCR 2399		10:22 NCR 2831							
11 NCAC 16 .0703	10:18 NCR 2399		10:22 NCR 2832							
<b>MARINE FISHERIES COMMISSION</b>										
15A NCAC 03I .0019			10:21 NCR 2737							
15A NCAC 03J .0401			10:21 NCR 2688							
<b>MEDICAL ASSISTANCE</b>										
10 NCAC 26B .0105	10:18 NCR 2398		10:22 NCR 2831							
10 NCAC 26H .0506		11:02 NCR 77								
10 NCAC 26H .0506	10:21 NCR 2686									
10 NCAC 50D .0101	10:24 NCR 3057									
10 NCAC 50D .0102	10:24 NCR 3057									
10 NCAC 50D .0103	10:24 NCR 3057									
10 NCAC 50D .0201	10:24 NCR 3057									
10 NCAC 50D .0301	10:24 NCR 3057									
10 NCAC 50D .0302	10:24 NCR 3057									
10 NCAC 50D .0401	10:24 NCR 3057									



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10 NCAC 50D .0402	10:24 NCR 3057									
10 NCAC 50D .0501	10:24 NCR 3057									
10 NCAC 50D .0502	10:24 NCR 3057									
10 NCAC 50D .0503	10:24 NCR 3057									
<b>MEDICAL BOARD</b>										
21 NCAC 32H	10:18 NCR 2400									
21 NCAC 32H .0101			10:22 NCR 2835							
21 NCAC 32H .0102			10:22 NCR 2835							
21 NCAC 32H .0201			10:22 NCR 2835							
21 NCAC 32H .0203			10:22 NCR 2835							
21 NCAC 32H .0301			10:22 NCR 2835							
21 NCAC 32H .0302			10:22 NCR 2835							
21 NCAC 32H .0303			10:22 NCR 2835							
21 NCAC 32H .0401			10:22 NCR 2835							
21 NCAC 32H .0402			10:22 NCR 2835							
21 NCAC 32H .0403			10:22 NCR 2835							
21 NCAC 32H .0404			10:22 NCR 2835							
21 NCAC 32H .0406			10:22 NCR 2835							
21 NCAC 32H .0407			10:22 NCR 2835							
21 NCAC 32H .0408			10:22 NCR 2835							
21 NCAC 32H .0409			10:22 NCR 2835							
21 NCAC 32H .0501			10:22 NCR 2835							
21 NCAC 32H .0502			10:22 NCR 2835							
21 NCAC 32H .0504			10:22 NCR 2835							
21 NCAC 32H .0505			10:22 NCR 2835							
21 NCAC 32H .0506			10:22 NCR 2835							
21 NCAC 32H .0507			10:22 NCR 2835							

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21 NCAC 32H .0601			10:22 NCR 2835							
21 NCAC 32H .0602			10:22 NCR 2835							
21 NCAC 32H .0701			10:22 NCR 2835							
21 NCAC 32H .0702			10:22 NCR 2835							
21 NCAC 32H .0801			10:22 NCR 2835							
21 NCAC 32H .0901			10:22 NCR 2835							
21 NCAC 32H .0902			10:22 NCR 2835							

## MOTOR VEHICLES, DIVISION OF

19A NCAC 03E .0500 11:01 NCR 13

## PUBLIC EDUCATION

Standards Board for Public School Administration

16 NCAC 07 10:23 NCR 2957

## REAL ESTATE COMMISSION

21 NCAC 58A .0101 10:22 NCR 2829  
21 NCAC 58A .0105 10:22 NCR 2829  
21 NCAC 58A .0109 10:22 NCR 2829  
21 NCAC 58A .0110 10:22 NCR 2829  
21 NCAC 58A .0302 10:22 NCR 2829  
21 NCAC 58A .0503 10:22 NCR 2829  
21 NCAC 58A .0504 10:22 NCR 2829  
21 NCAC 58A .1501 10:22 NCR 2829  
21 NCAC 58A .1502 10:22 NCR 2829  
21 NCAC 58A .1601 10:22 NCR 2835

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## REVENUE

17 NCAC 01C .0504		10:20 NCR 2599								
17 NCAC 01C .0506		10:20 NCR 2599								
17 NCAC 05C .2101			10:24 NCR 3059							
17 NCAC 06B .0612			10:22 NCR 2833							
17 NCAC 06B .3716			10:22 NCR 2833							
17 NCAC 07B .1101			10:21 NCR 2688							
17 NCAC 07B .1105			10:21 NCR 2688							
17 NCAC 07B .1108			10:21 NCR 2688							
17 NCAC 07B .1109			10:21 NCR 2688							
17 NCAC 07B .1110			10:21 NCR 2688							
17 NCAC 07B .1112			10:21 NCR 2688							
17 NCAC 07B .1114			10:21 NCR 2688							
17 NCAC 07B .1123			10:21 NCR 2688							
17 NCAC 07B .1602			10:21 NCR 2688							
17 NCAC 07B .1701			10:21 NCR 2688							
17 NCAC 07B .1702			10:21 NCR 2688							
17 NCAC 07B .1802			10:21 NCR 2688							
17 NCAC 07B .2401			10:21 NCR 2688							
17 NCAC 07B .2601			10:21 NCR 2688							
17 NCAC 07B .4002			10:21 NCR 2688							
17 NCAC 07B .4004			10:21 NCR 2688							
17 NCAC 07B .4008			10:21 NCR 2688							
17 NCAC 07B .4301			10:21 NCR 2688							
17 NCAC 07B .4408			10:21 NCR 2688							
17 NCAC 07B .4902			10:21 NCR 2688							

Tax Review Board

11:02 NCR 72

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## SOCIAL WORK, BOARD OF

21 NCAC 63 .0306 10:21 NCR 2739

## SOIL SCIENTISTS, BOARD FOR LICENSING

21 NCAC 69 10:19 NCR 2507

## SOCIAL SERVICES COMMISSION

10 NCAC 41F	10:23 NCR 2956									
10 NCAC 41F .0706		10:21 NCR 2726								
10 NCAC 41F .0707		10:21 NCR 2726								
10 NCAC 41F .0812		10:21 NCR 2726								
10 NCAC 41F .0813		10:21 NCR 2726								
10 NCAC 41I .0100	10:17 NCR 2228									
10 NCAC 41I .0102			10:21 NCR 2687							
10 NCAC 42A .0701		10:21 NCR 2728								
10 NCAC 42A .0702		10:21 NCR 2728								
10 NCAC 42A .0703		10:21 NCR 2728								
10 NCAC 42B .1209		10:21 NCR 2729								
10 NCAC 42B .1210		10:21 NCR 2729								
10 NCAC 42B .1211		10:21 NCR 2729								
10 NCAC 42B .2402		10:21 NCR 2729								
10 NCAC 42B .2403		10:21 NCR 2729								
10 NCAC 42B .2404		10:21 NCR 2729								
10 NCAC 42B .2405		10:21 NCR 2729								
10 NCAC 42C .2010		10:21 NCR 2729								
10 NCAC 42C .2011		10:21 NCR 2729								
10 NCAC 42C .2012		10:21 NCR 2729								
10 NCAC 42C .3701		10:21 NCR 2729								

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10 NCAC 42C .3702	10:21 NCR 2729
10 NCAC 42C .3703	10:21 NCR 2729
10 NCAC 42C .3704	10:21 NCR 2729
10 NCAC 42D .1409	10:21 NCR 2729
10 NCAC 42D .1410	10:21 NCR 2729
10 NCAC 42D .1411	10:21 NCR 2729
10 NCAC 42D .1827	10:21 NCR 2729
10 NCAC 42D .1828	10:21 NCR 2729
10 NCAC 42D .1829	10:21 NCR 2729
10 NCAC 42D .1830	10:21 NCR 2729
10 NCAC 42V .0201	10:20 NCR 2597
10 NCAC 42V .0802	10:20 NCR 2597
10 NCAC 42V .0803	10:20 NCR 2597

## STATE PERSONNEL COMMISSION

25 NCAC 01J .0613	10:23 NCR 2960
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25 NCAC 01J .0613

Approve

03/21/96

11:01 NCR 26

## STATE PORTS AUTHORITY

4 NCAC 13	10:24 NCR 3056
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## SUBSTANCE ABUSE PROFESSIONALS CERTIFICATION BOARD

21 NCAC 68	10:18 NCR 2401
21 NCAC 68 .0101	10:22 NCR 2850
21 NCAC 68 .0102	10:22 NCR 2850
21 NCAC 68 .0201	10:22 NCR 2850
21 NCAC 68 .0202	10:22 NCR 2850
21 NCAC 68 .0203	10:22 NCR 2850

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21 NCAC 68 .0204			10:22 NCR 2850							
21 NCAC 68 .0205			10:22 NCR 2850							
21 NCAC 68 .0206			10:22 NCR 2850							
21 NCAC 68 .0207			10:22 NCR 2850							
21 NCAC 68 .0208			10:22 NCR 2850							
21 NCAC 68 .0209			10:22 NCR 2850							
21 NCAC 68 .0210			10:22 NCR 2850							
21 NCAC 68 .0211			10:22 NCR 2850							
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21 NCAC 68 .0213			10:22 NCR 2850							
21 NCAC 68 .0401			10:22 NCR 2850							
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21 NCAC 68 .0403			10:22 NCR 2850							
21 NCAC 68 .0404			10:22 NCR 2850							
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21 NCAC 68 .0702			10:22 NCR 2850							
21 NCAC 68 .0703			10:22 NCR 2850							
21 NCAC 68 .0704			10:22 NCR 2850							
21 NCAC 68 .0705			10:22 NCR 2850							
21 NCAC 68 .0706			10:22 NCR 2850							
21 NCAC 68 .0707			10:22 NCR 2850							
21 NCAC 68 .0708			10:22 NCR 2850							
21 NCAC 68 .0709			10:22 NCR 2850							

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(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				

## TRANSPORTATION

19A NCAC 06B .0401 10:23 NCR 2957  
 19A NCAC 06B .0402 10:23 NCR 2957  
 19A NCAC 06B .0403 10:23 NCR 2957  
 19A NCAC 06B .0404 10:23 NCR 2957  
 19A NCAC 06B .0405 10:23 NCR 2957  
 19A NCAC 06B .0406 10:23 NCR 2957  
 19A NCAC 06B .0407 10:23 NCR 2957  
 19A NCAC 06B .0408 10:23 NCR 2957  
 19A NCAC 06B .0409 10:23 NCR 2957  
 19A NCAC 06B .0410 10:23 NCR 2957  
 19A NCAC 06B .0411 10:23 NCR 2957  
 19A NCAC 06B .0412 10:23 NCR 2957  
 19A NCAC 06B .0413 10:23 NCR 2957  
 19A NCAC 06B .0414 10:23 NCR 2957  
 19A NCAC 06B .0415 10:23 NCR 2957  
 19A NCAC 06B .0416 10:23 NCR 2957  
 19A NCAC 06B .0417 10:23 NCR 2957

## USS NORTH CAROLINA BATTLESHIP COMMISSION

7 NCAC 05 .0200 10:18 NCR 2398

## WILDLIFE RESOURCES COMMISSION

15A NCAC 10B .0106 11:02 NCR 76  
 15A NCAC 10B .0123 11:02 NCR 76  
 15A NCAC 10B .0203 11:02 NCR 76  
 15A NCAC 10B .0208 11:02 NCR 76  
 15A NCAC 10B .0209 11:02 NCR 76

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15A NCAC 10C .0107	11:02 NCR 76									
15A NCAC 10C .0205	11:02 NCR 76									
15A NCAC 10C .0305	11:02 NCR 76									
15A NCAC 10C .0401	11:02 NCR 76									
15A NCAC 10D .0002	11:02 NCR 76									
15A NCAC 10D .0003	11:02 NCR 76									
15A NCAC 10F .0100	10:19 NCR 2506									
15A NCAC 10F .0102			11:01 NCR 14							
15A NCAC 10F .0103			11:01 NCR 14							
15A NCAC 10F .0104			11:01 NCR 14							
15A NCAC 10F .0105			11:01 NCR 14							
15A NCAC 10F .0106			11:01 NCR 14							
15A NCAC 10F .0107			11:01 NCR 14							
15A NCAC 10F .0109			11:01 NCR 14							
15A NCAC 10F .0300	11:01 NCR 13									
15A NCAC 10F .0305			11:01 NCR 14							
15A NCAC 10F .0307	11:02 NCR 76									
15A NCAC 10F .0310			11:01 NCR 14							
15A NCAC 10F .0342			11:01 NCR 14							
15A NCAC 10F .0348			11:01 NCR 14							
15A NCAC 10G	11:01 NCR 13									
15A NCAC 10G .0100	11:02 NCR 76									
15A NCAC 10I .0002	11:02 NCR 76									



# BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
<b>Title 1 - Dept. of Administration - Full Title</b>	<b>201 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
<b>Title 2 - Dept. of Agriculture - Full Title</b>	<b>202 00 00</b>	<b>\$98.00</b>	<b>\$140.00</b>
Food & Drug Protection Division	202 15 09	\$28.00	\$40.00
Structural Pest Control Committee	202 15 34	\$21.00	\$30.00
Agricultural Markets	202 15 43	\$21.00	\$30.00
Plant Industry	202 15 48	\$21.00	\$30.00
Animal Industry	202 15 52	\$21.00	\$30.00
<b>Title 3 - Dept. of State Auditor - Full Title</b>	<b>203 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 4 - Dept. of Commerce - Full Title</b>	<b>204 00 00</b>	<b>\$87.50</b>	<b>\$125.00</b>
Alcoholic Beverage Control Commission	204 15 02	\$12.00	\$40.00
Banking Commission	204 15 03	\$24.50	\$35.00
Credit Union Division	204 15 06	\$14.00	\$20.00
Savings & Loan Division	204 15 09	\$14.00	\$20.00
Industrial Commission/Workers Compensation	204 15 10	\$14.00	\$20.00
Savings Institutions Division	204 15 16	\$24.50	\$35.00
<b>Title 5 - Dept. of Corrections - Full Title</b>	<b>205 00 00</b>	<b>\$56.00</b>	<b>\$80.00</b>
Division of Prisons	205 15 02	\$24.50	\$35.00
<b>Title 6 - Council of State - Full Title</b>	<b>206 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 7 - Dept. of Cultural Resources - Full Title</b>	<b>207 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 8 - State Board of Elections - Full Title</b>	<b>208 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 9 - Offices of the Governor &amp; Lt. Governor - Full Title</b>	<b>209 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
<b>Title 10 - Dept. of Human Resources - Full Title</b>	<b>210 00 00</b>	<b>\$346.50</b>	<b>\$495.00</b>
Licensing of Health Facilities	210 20 10	\$45.50	\$65.00
Detention Facilities	210 20 20	\$31.50	\$45.00
Mental Health & Rehabilitation Services	210 20 30	\$77.00	\$110.00
Social Services	210 20 40	\$119.00	\$170.00
Children Services/Day Care	210 20 41	\$31.50	\$45.00
Services for the Aging	210 20 42	\$31.50	\$45.00
Services for the Blind	210 20 43	\$28.00	\$40.00
Services for the Deaf & Hard of Hearing	210 20 44	\$17.50	\$25.00
Employment Opportunities	210 20 45	\$35.00	\$50.00
<b>Title 11 - Dept. of Insurance - Full Title</b>	<b>211 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Insurance	211 10 01	\$56.00	\$80.00
Consumer Services	211 10 04	\$24.50	\$35.00
Fire & Rescue Services	211 10 05	\$17.50	\$25.00
Agent Services	211 10 06	\$28.00	\$40.00
Engineering & Building Codes	211 10 08	\$21.00	\$30.00
<b>Title 12 - Dept. of Justice - Full Title</b>	<b>212 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Private Protective Services	212 10 07	\$21.00	\$30.00
Police & Sheriff's Education & Training Standards	212 10 09	\$31.50	\$45.00
NC Alarm Systems Licensing Board	212 10 11	\$17.50	\$25.00
<b>Title 13 - Dept. of Labor - Full Title</b>	<b>213 00 00</b>	<b>\$77.00</b>	<b>\$110.00</b>
Mine & Quarry Safety	213 15 06	\$14.00	\$20.00
General Safety/OSHA	213 20 00	\$31.50	\$45.00
Wage & Hour Rules	213 15 12	\$14.00	\$20.00
Boiler & Pressure Vessel Safety	213 15 13	\$14.00	\$20.00
Apprenticeship & Training	213 15 14	\$14.00	\$20.00
Elevator & Amusement Device Safety	213 15 15	\$14.00	\$20.00
<b>Title 14A - Dept. of Crime Control &amp; Public Safety - Full Title</b>	<b>214 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
Alcohol Law Enforcement	214 00 08	\$17.50	\$25.00
Victims Compensation Fund	214 00 11	\$14.00	\$20.00
<b>Title 15A - Dept. of Environ., Health, &amp; Nat. Resources - Full Title</b>	<b>215 00 00</b>	<b>\$276.50</b>	<b>\$395.00</b>
Environmental Management	215 15 00	\$116.50	\$165.00
Air Quality	215 15 10	\$49.00	\$70.00
Water Quality	215 15 20	\$49.00	\$70.00
Land & Waste Management	215 15 30	\$56.00	\$80.00
Solid Waste Management	215 15 31	\$35.00	\$50.00
Underground Storage Tanks	215 15 32	\$17.50	\$25.00

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	\$31.50	\$45.00
Environmental Health	215 25 00	\$105.00	\$150.00
Radiation/Nuclear Waste	215 25 10	\$42.00	\$60.00
Sanitation	215 25 20	\$35.00	\$50.00
Public Health	215 25 30	\$59.50	\$85.00
Intoxilizer & Breathalyzer	215 25 31	\$17.50	\$25.00
<b>Title 16 - Dept. of Public Instruction - Full Title</b>	<b>216 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
Elementary & Secondary Education	216 10 06	\$21.00	\$30.00
<b>Title 17 - Dept. of Revenue - Full Title</b>	<b>217 00 00</b>	<b>\$91.00</b>	<b>\$130.00</b>
Taxes on Individuals	217 15 10	\$31.50	\$45.00
Taxes on Business	217 15 20	\$56.00	\$80.00
Sales & Use Tax Division	217 15 27	\$31.50	\$45.00
Motor Fuels Tax Division	217 15 29	\$21.00	\$30.00
<b>Title 18 - Secretary of State - Full Title</b>	<b>218 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
Securities Division	218 10 06	\$21.00	\$30.00
<b>Title 19A - Dept. of Transportation - Full Title</b>	<b>219 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Division of Highways	219 10 02	\$28.00	\$40.00
Division of Motor Vehicles	219 10 03	\$35.00	\$50.00
<b>Title 20 - Dept. of the State Treasurer - Full Title</b>	<b>220 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
<b>Title 21 - Occupational Licensing Boards - Full Title</b>	<b>221 00 00</b>	<b>\$143.50</b>	<b>\$205.00</b>
<b>Title 22 - Administrative Procedures Act - Repealed</b>	<b>222 00 00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Title 23 - Dept. of Community Colleges - Full Title</b>	<b>223 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 24 - Independent Agencies - Full Title</b>	<b>224 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 25 - Office of State Personnel - Full Title</b>	<b>225 00 00</b>	<b>\$42.00</b>	<b>\$60.00</b>
<b>Title 26 - Office of Administrative Hearings - Full Title</b>	<b>226 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 27 - North Carolina State Bar - Full Title</b>	<b>227 00 00</b>	<b>\$42.00</b>	<b>\$60.00</b>
<b>North Carolina Administrative Code - Full Code</b>	<b>299 99 98</b>	<b>\$375.00</b>	<b>\$750.00</b>
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<b>Title 26 - Office of Administrative Hearings - Full Title</b>	<b>226 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 27 - North Carolina State Bar - Full Title</b>	<b>227 00 00</b>	<b>\$42.00</b>	<b>\$60.00</b>
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